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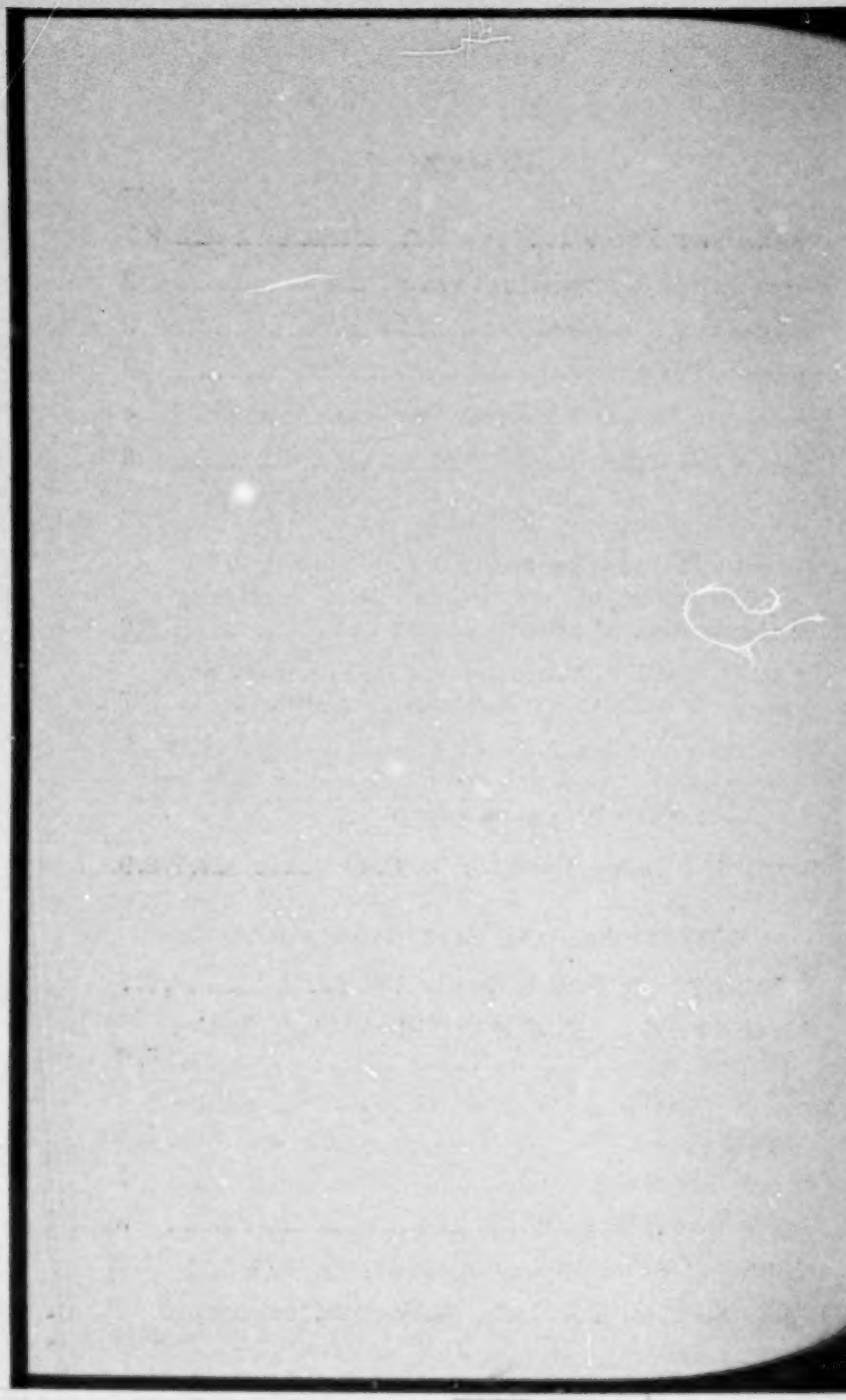

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1949

No.

IN RE PETITION OF MARTIN LUDWIG COHNSTAEDT FOR NATURALIZATION,

Petitioner,

VS.

IMMIGRATION AND NATURALIZATION SERVICE OF THE UNITED STATES DEPARTMENT OF JUSTICE,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF KANSAS

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

Petitioner, Martin Ludwig Cohnstaedt, respectfully prays that a Writ of Certiorari be issued to the Supreme Court of the State of Kansas to review a judgment of that Court denying Petitioner's application for citizenship.

The Opinion Below

The opinion of the Supreme Court of Kansas has not yet been officially reported. It is unofficially reported in 207 P. 2d 425.

Statement of Matters Involved

Petitioner filed a petition for naturalization pursuant to the Nationality Act of 1940 in the District Court of Barton County, Kansas, seeking a decree of naturalization, on May 13, 1947 (A.* 1-3). His petition was opposed by the Immigration and Naturalization Service of the United States Department of Justice upon the ground that the Petitioner had "failed to establish attachment to the principles of the Constitution and favorable disposition toward the good order and happiness of the United States during the period required by law" (A. 3).

After a hearing (A. 8-32) the Trial Court first granted the petition (A. 4, 5), but after reconsideration denied it without giving any reasons (A. 5). That decision was affirmed by the Kansas Supreme Court, the highest court of that state.

As appears from the hearing, the objection to the naturalization of Petitioner rested entirely upon his pacifist views, Petitioner being a Quaker (A. 16). Petitioner was born in Germany in 1917 (A. 9), left Germany in 1934 for England and came to this country from England in 1937 (A. 9). In this country he worked primarily as a farmer (A. 10), and has obtained a degree of B.S. in Agriculture from Rutgers University (A. 11). In 1946 he worked in Poland under the auspices of UNRRA and since then has taught at Sterling College, Kansas (A. 12). He is married to an American citizen (A. 12, 13), has subscribed to the principles enunciated in the Constitution of the United States and has announced his willingness to renounce his allegiance to the German State (A. 13).

On cross-examination it appeared that Petitioner had expressed the opinion that in a Christian nation the armed services were not necessary (A. 15).

Asked whether he would be willing to contribute "in any way to armed forces" he said: "I do not believe in this country engaging in armed conflict for any reason

* The reference A. is to the abstract used in the state court, which begins at page 6 of the certified transcript.

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and I cannot contribute anything to be used solely and directly in furtherance of armed conflict" (A. 17). He was asked whether he would be willing to work in munitions factories in time of war and said no (A. 17). This answer appeared to have been the chief reason for the position of the Kansas Supreme Court.

However, Petitioner stated that he would be willing to help remove wounded from the battlefield but not willing to deliver munitions to men at the front (A. 18). While he objected to becoming a member of the Armed Forces he said he would not object to wearing a uniform if that were possible without becoming such member (A. 19). It appeared that in World War II he was recognized by the draft authorities as a conscientious objector and given a 4E classification (A. 20).

Petitioner's application for citizenship was supported by the President Emeritus of Sterling College (A. 23) and by a Minister of the Congregation Church of Partridge, Kansas (A. 26).

Statement on Jurisdiction

The judgment of the Supreme Court of the State of Kansas was entered on June 11, 1949. Timely application under Kansas law was made for a rehearing. This application was denied without opinion by the Kansas Supreme Court on July 8, 1949.

The jurisdiction of this Court is invoked under Section 1257(3) of the United States Judicial Code.

Question Presented

Was this Petitioner properly denied the right to be naturalized as a United States citizen by the state courts of Kansas because of his conscientious scruples against war and its associated activities even though he conformed to the legal standards of conduct that have been to date demanded of United States citizens?

Constitutional and Statutory Provisions Involved

United States Constitution—Article 1, Section 8.

"The Congress shall have power * * * to establish an uniform rule of naturalization * * *."

Nationality Code, Title 8.

"§ 735. Oath of renunciation and allegiance.

(a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same, provided that in the case of the naturalization of a child under the provisions of sections 715 or 716 the naturalization court may waive the taking of such oath if in the opinion of the court the child is too young to understand its meaning.

(b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgement whereof I have hereunto affixed my signature."

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Selective Service Act of 1940,
Title 50, App. § 305.

"(g) Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming such exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, in lieu of such induction, be assigned to work of national importance under civilian direction."

Selective Service Act of 1948,
Title 50, App. § 456.

"(j) Nothing contained in this title shall be construed to require any person to be subject to combatant training and service in the armed forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Religious training and belief in this connection means an individual's belief in a relation to a Supreme Being involving duties superior to those arising from any human relation, but does not include essentially political sociological, or philosophical views or a merely personal moral code. Any person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the armed forces under this title, be assigned to non-combatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such non-combatant service, be deferred."

Reasons for Allowance of Writ

The writ should be granted because the Kansas Court misapplied the Nationality Act of 1940 and misinterpreted the decision of this Court in *Girouard* v. *United States*, 328 U. S. 61, in denying Petitioner the federal right of citizenship to which he was entitled under the statute as interpreted.

The views of Petitioner are substantially the same as those of Rosika Schwimmer, whose application for naturalization was rejected by this Court in 279 U. S. 644, one of the decisions overruled by the later decision in the *Girouard* case.

There is no basis for the distinction made by the Supreme Court of Kansas that Petitioner was not entitled to citizenship because he refused to serve in the Army as a non-combatant. The Selective Service Act of 1940 [50 U. S. C. App. § 305(g)] recognized that a conscientious objector was entitled to exemption from *non-combatant* as well as from combatant service and in such case would be required to perform work of national importance. Pursuant to that provision Petitioner was actually exempted from all military obligations (A. 20). The same principle was carried forward into the Selective Service Act of 1948 [50 U. S. C. App. § 456(j)] except that under that law a person who claimed exemption from non-combatant service was deferred entirely.

ARGUMENT

POINT I

The question involved is important in the administration of the federal laws concerning naturalization of aliens.

The Nationality Act of 1940 and as amended does not specifically exclude from naturalization conscientious ob-

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jectors to war who are non-combatants. (See U. S. Code, Title 8, Secs. 601 et seq.). Rather the Nationality Act of 1940, supra, and as amended provides in substance that any alien who can take the oath of allegiance in good faith is entitled to a decree of citizenship, but the Kansas court, as disclosed by the opinion in this case, has flatly ruled that the Petitioner, a member of the Society of Friends, opposed by reason of his religious scruples from participating as a non-combatant in the Armed Forces, is not attached to the principles of the Constitution and that the *Girouard* case, 328 U. S. 61, so held. Petitioner asserts that this is a patent error made by the trial court and the Kansas Supreme Court in this case and that it is contrary to the views expressed by this Court in the *Girouard* opinion, namely, that a pacifist in the broad sense of the term, is not by reason of that alone disqualified from seeking his naturalization as a United States citizen.

POINT II

Petitioner sustained his burden of proving that he is entitled to a decree of naturalization.

The record discloses that this Petitioner was a person of German birth who filed his petition to become a naturalized citizen in the District Court of Barton County, Kansas. He offered evidence in support of his petition which disclosed briefly that he was born in 1917, came to the United States in 1937, and attended school in the United States and since 1946 had been a teacher at Sterling College, in Sterling, Kansas. Petitioner states that he subscribed to the principles enumerated in the Constitution of the United States, and that he agreed to support and defend the Constitution and laws against all enemies and to bear true faith and allegiance to the United States, and that he made such statements without mental reservations. On cross-examination, Petitioner stated that he believed the exist-

ence of armed services was not necessary in a Christian nation, and that he was willing to have repealed all laws providing for armed services; that he was not an ordained minister, but was a member of the Society of Friends; that he was willing to perform any duty which the Government required which did not conflict with his religious beliefs, but that he could not contribute anything to be used solely and directly in furtherance of armed conflict; that he was opposed to sending arms and ammunition to our allies in the recent war; that he was not willing to work in a munitions factory in time of war and assist in manufacture of munitions for the purpose of destroying enemy forces whose aim would be to destroy the armed forces of the United States; that in event of war, if it should be permissible for civilians to remove the wounded from a battleground he would do so, but he would not deliver ammunition to men at the front who were engaged in combat duty.

From this the Kansas Supreme Court concluded that Petitioner was not willing to serve in the armed forces as a non-combatant and that therefore he was not entitled to be a United States citizen under the doctrine handed down in *Girouard* v. *United States*, supra.

The decision of this Court in the *Girouard* case does not justify the distinction made by the Kansas Court, although it is true that Girouard expressed a willingness to serve in the Army as a non-combatant. Mr. Justice Douglas pointed out that the oath required by Congress [8 U. S. C. § 735(b)] bound both non-combatants and combatants and that eligibility for citizenship should therefore in no way depend on whether a person was willing to act as a combatant or a non-combatant.

Congress has further recognized this by the provisions of the various Selective Service Acts. In 1940 the law provided that a person who was conscientiously opposed to war on religious grounds, as is the case of Petitioner here, was not only entitled to exemption from combatant service and entitled to serve as a non-combatant, but, furthermore, that if his conscientious scruples prohibited him

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from serving even as a non-combatant he would be nevertheless entitled to exemption and that in that event would be required to serve at work of national importance. In the 1948 Act the essential provisions are retained except that a person whose conscience prohibits him from serving even as a non-combatant is totally deferred.

It is plain, therefore, that Congress recognized that the call of conscience would justify a person refusing to serve even as a non-combatant. Since the Draft Law gives exemption in such case, it is difficult to see how it can be argued that a person who refuses to serve as a non-combatant can be denied citizenship. The decision of the Court below is therefore contrary to the Nationality Act as interpreted by this Court. The issue raised is important and calls for review by this Court.

CONCLUSION

It is therefore respectfully submitted that this Court grant a writ of certiorari in order to decide whether or not the Kansas Supreme Court correctly applied the doctrine of the *Girouard* case to the instant case, and that Petitioner's rights granted by the Congress of the United States in the Nationality Act of 1940 and as amended be adequately protected.

Respectfully submitted,

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